Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Parts 32 and 64 of the	)	CC Docket No. 93-251
Commission's Rules to Account for	)	
Transactions Between Carriers and	)	
Their Nonregulated Affiliates	)	

Reply Comments

of

The Southern New England Telephone Company

The Southern New England Telephone Company (SNET), pursuant to the Federal Communications Commission's (Commission's) Notice of Proposed Rulemaking released October 20, 1993 (Notice),[1] hereby files its Reply Comments in the above captioned proceeding. On December 10, 1993, SNET and 21 other parties filed comments on the affiliate transaction rules proposed in the Notice.[2]

I. Introduction.

SNET agrees that the proposed rules "are a classic case of unnecessary and inefficient regulation that will impose substantial costs and no benefits to the

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1 Amendment of Parts 32 and 64 of the Commission's Rules to Account for Transactions Between Carriers and Their Nonregulated Affiliates, CC Docket No. 93-251, Notice of Proposed Rulemaking released October 20, 1993 (FCC 93-453), 8 FCC Rcd 8071 (1993).

2 The commenting parties are listed on Attachment 1.

public."[3] Moreover, the proposed rules would impose significant additional burdens on the Commission as well as on the local exchange carriers (LECs), and would introduce unresolvable conflicts into the regulatory process.

SNET urges the Commission not to adopt its proposed rules, because the current regulations are more than adequate to protect the public interest.

II. Neither The Commenting Parties Nor The Notice Can Identify Legitimate Regulatory Reasons For The Proposed Rules, Because There Are None.

Many commentors correctly argue that the Notice does not advance any evidence that new affiliate transaction rules are required, and that no party has provided any documentation that the present rules are inadequately protecting ratepayers. The Notice "does not cite one shred of evidence that the current rules are insufficient or ineffective."[4] The Notice "is completely devoid of any analysis of cost versus benefit relating to the proposed rule changes."[5] NTCA somewhat more tactfully states that the "apparent rationale" for the Notice's proposed amendments "is based on somewhat tentative theoretical conclusions."[6] Even ICA "recommends that the Commission provide more details and citations" to support its conclusions.[7]

In supporting the proposals, MCI and ICA can only state that the proposed rules are "long overdue," that the current accounting rules area "historically has

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3 BellSouth, pg. 35.

4 Bell Atlantic, pgs. 4, 9. See also Ameritech, pg. 1; SWB, pg. 19; SNET, pg. 2; U S West, pg. 4; USTA, pg. 3; Sprint, pg. 3; BellSouth, pg. 6.

5 BellSouth, pg. 4. See also Bell Atlantic, pg. 7; Sprint, pg. 3; SWB, pg. 17; USTA, pg. 5; GTE, pg. 10.

6 NTCA, pg. 3.

7 ICA, pg. 5.

been subject to considerable carrier abuse"[8] and that the rules "contain too many loopholes, or avenues for the evasion of normal, customary business practices."[9] However, if the proposals are so long overdue, why haven't these or other parties filed Petitions For Rulemaking or taken some other regulatory initiative to correct the rule shortcomings they perceive? If the LECs have "considerably abused" the affiliate transactions rules, why haven't these or some other parties petitioned for changes in these rules? SNET notes that MCI and ICA have not provided any examples of "carrier abuse" or "loopholes" or "avenues for evasion."[10] The Commission should not take such sweeping, unsubstantiated, and obviously self-serving generalizations seriously. SNET submits that a sustainable rationale for scrapping the current rules cannot be demonstrated, simply because there is none.

Only NTCA appears to see any evidence at all, but even that is proved erroneous by a close examination. NTCA states that the Notice "cites numerous individual LEC proceedings" that it believes "have contributed to the Commission's and the staff's analysis and tentative conclusions supporting the need for the possible modifications."[11] NTCA cites nine of the Notice's footnotes,[12] implying that they justify "the need for possible modifications." Unfortunately, NTCA misinterprets these footnotes. NTCA's citations do not all apply to "individual LEC proceedings;" rather, some merely refer to Commission orders in the price cap and cost separation dockets, orders which the Notice had cited as authority when the

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8 MCI, pg. 1; ICA, pg. 3.

9 ICA, pg. 2.

10 SNET notes for the record that, ever since it has been filing its Cost Allocation Manual (i.e., since September 1, 1987), not a single member of the public has commented on or objected to the basis of its affiliate transactions. Further, no party has ever commented on or objected to SNET's reported data on affiliate transactions in its USOA Reports, ARMIS Report FCC 43-02, Table I-2.

11 NTCA, pg. 2.

12 Id., note 3.

current regulations were adopted. The other citations apply to individual proceedings in which LEC Cost Allocation Manual modifications had been approved, because they met the standard of "an absence of harm to ratepayers."[13] The footnotes on which NTCA relies are actually justifications for current regulations, not justifications for new rules. They provide no evidence that LEC affiliate transactions under current rules have been harmful to ratepayers.

SNET concludes that neither the Notice nor the record can describe any reasoned analysis or sustainable public interest benefit for changing the present rules, because there is none.[14]

III. The Proposals Contradict The Current Thrust Of The Dynamic Telecommunications Marketplace.

SNET believes that the Notice is contrary to the Commission's pro-competitive policies, as well as the developing trend toward regulatory simplification and streamlining. For example, SNET notes the contradiction between the Commission's initiative in simplifying depreciation prescription proceedings on the one hand, and its making more complex and contentious the affiliate transaction rules on the other.[15] Surely the former is the approach that is most consistent with the rapidly changing, highly competitive telecommunications environment of today. LECs require regulations of a simpler kind than those proposed, if the public is to benefit from the burgeoning markets for advanced telecommunications products and services.[16]

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13 Notice, para. 37.

14 Bell Atlantic, fn. 10; SWB, pg. 7; U S West, pg. 9; Ameritech, pg. 6; SWB, pg. 18; BellSouth, pgs. 9-10; PacBell, pg. 23.

15 SWB, pg. 2; AT&T, pg. 4.

16 See Edmund L. Andrews, "MCI Plans to Enter Local Markets," The New York Times, January 5, 1994, pg. D1.

Furthermore, the Notice is fundamentally incompatible with the Clinton administration's "urgent need to create a flexible and responsive government."[17] SNET fully agrees with Vice President Gore: "[w]e must steer a course between a modern Scylla and Charybdis, between the shoals of suffocating regulation on one side and the rocks of unfettered monopolies on the other. Both stifle competition and innovation."[18] SNET does not seek to become an "unfettered monopolist," and it certainly is not one. But SNET must argue strongly against "suffocating over-regulation that stifles competition and innovation,"[19] which would be one outcome if the proposed rules were adopted. LECs and the Commission, working together with all parties, "can eliminate many of the regulatory barriers now in the path of the information superhighway."[20]

The Notice is an example of "a tangled web of regulations and public policies" which "stymies" those who are trying to bring a national information infrastructure into reality.[21] The Notice perpetuates:

> current regulatory policy [which is] rooted in the old world of scarcity. ... In this new world of abundant, heterogeneous technologies and multiple providers, the market paradigm has changed. New technologies and new capabilities of existing technologies are altering the economics of delivering new products and services to the market .... [T]he regulatory process is lagging technology deployment, delaying its

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17 Vice President Al Gore, **Address to the National Press Club**, Washington, D.C., December 21, 1993, pg. 15. As an example, even the Internal Revenue Service is simplifying its rules, with regard to the deductibility of lobbying expense. See, Keith Bradsher, "I.R.S. Issues Simple Rules: Lobbyist Can Estimate Time," The New York Times, December 24, 1993, pg. D1. See further, PacBell, pg. 6; SWB, pg. 2; USTA, pg. 13.

18 Id., pg. 12.

19 Id., pg. 17.

20 Id., pg. 15 (emphasis added).

21 **Competition Policy: Unlocking the National Information Infrastructure**, The Council on Competitiveness, 900 17th Street, N.W., Washington, D.C. 20006, December 16, 1993, at pg. 3.

delivery to the customer, forestalling the economic benefits it can bring, and retarding the demand for follow-on technologies.[22]

SNET urges the Commission not to adopt its proposals, not only because there is no justification for adopting them, but also because they would produce more regulation right at the time when telecommunications, if reasonably freed and encouraged, can create dynamic possibilities for the Nation. The proposed regulations would stifle the Commission's initiatives in many other areas, and provide disincentives for the LECs by impeding their ability to participate in the increasingly competitive marketplace with unduly burdensome rules which apply only to them.

IV. The Derived Estimates Of Fair Market Value Would Breed Controversy And Unresolvable Conflict.

The proposed rules apparently are based on the hope that the new estimated fair market value will be higher than the current fully distributed cost (FDC) when the carrier is the seller, and lower than FDC when the carrier is the buyer, thereby reducing LEC regulated costs. Should this outcome occur, LEC regulated costs would go down, and the Commission's price cap scheme might appear to be even more successful just as its LEC price cap review is about to begin. However, it is far from certain that estimated fair market value would come in at levels more advantageous than FDC.[23]

More importantly, the record is clear that estimated fair market value cannot be developed with certainty or precision, for it is by its very nature a subjective estimate, ultimately based upon someone's opinion and judgment. Simply put, there are so many variables to consider in market analyses of this type that a reliable

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22 Id.

23 SWB, pgs. 28-29; PacBell, pgs. 15, 17; U S West, pgs. 20-21; Ameritech, fn. 40.

estimated fair market value for a particular service provided between a LEC and an affiliate will probably not be able to be derived.[24]

Lastly, any estimated fair market values derived by LEC analysis will be subjected to considerable dispute during the audit process. These values will be vigorously contested because of their ultimate role in determining the regulated costs of the LEC, and therefore cannot be resolved. Ironically, use of estimated fair market value will add "complexity and subjectivity to the audit process thereby diminishing the enforcement mechanism that the FCC currently has in place."[25] Estimated fair market values will be doomed from the start because their derivation cannot be reconciled with their purpose.[26]

V. Any Review Of Affiliate Transaction Rules Must Await The Conclusion Of The Review Of LEC Price Cap Regulation.

Most parties correctly believe the Commission's imminent review of LEC price cap regulation obviates the need to adopt any new affiliate transaction rules at this time.[27] SNET also believes that this would be the correct course of action.

A main purpose of price cap regulation is to stimulate greater productivity. SNET believes that this objective is being accomplished, and that there should be no disruption in this progress. LECs should continue to be encouraged to make investment and operating decisions which reflect their business environments. More stringent accounting rules are not appropriate under an incentive regulation regime.

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24 BellSouth, pg. 25; SWB, pg. 13; U S West, pg. 13.

25 Coopers & Lybrand, pg. 1 (emphasis added).

26 SNET must note the irony of the high additional administrative costs of these regulations (BellSouth, pg. 2; SWB, pg. 23; SNET, pg. 8; PacBell, pg. 9; Ameritech, pg. 15), with the result being that the derived values would be unreliable and subject to considerable dispute (Coopers & Lybrand, pg. 1; Sprint, pg. 17; Nynex, pg. 28; BellSouth, pgs. 16-17; Ameritech, pg. 15; GTE, pg. 3).

27 Bell Atlantic, pg. 7; Sprint, pg. 3; Ameritech, pg. 7; PacBell, pg. 5; U S West, pg. 5; USTA, pg. 15; Nynex, pg. 11; BellSouth, pg. 8.

Furthermore, if the price cap review concludes that the LEC sharing mechanism could be modified, then the affiliate transaction and cost allocation rules should be modified as well. SNET urges that no changes in these safeguards be made until the price cap review is completed.

VI. Conclusion.

No evidence on the record supports the proposed rules. The record contains no sustainable basis for the determination that the current rules are not providing the ratepayer protection required by the Communications Act of 1934, as amended, no basis for the proposition that the current rules are ineffective in preventing unlawful cross-subsidy, and no basis for the supposition that LECs have been acting imprudently. No party has advanced any explanation that could survive judicial review in support of the proposed rules or of such a deliberate departure from current practice. SNET therefore urges the Commission not to adopt the Notice's proposals.

Respectfully submitted,

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Attachment 1

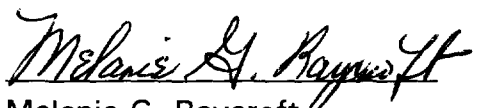
COMMENTS FILED ON DECEMBER 10, 1993

in CC Docket No. 93-251

1. ALLTEL Service Corporation
2. American Telephone and Telegraph Company
3. Ameritech Operating Companies (Ameritech)
4. Bell Atlantic Telephone Companies (Bell Atlantic)
5. BellSouth Telecommunications, Inc. (BellSouth)
6. Cincinnati Bell Telephone Company (CBT)
7. Coopers & Lybrand
8. GTE Service Corporation and its affiliated domestic telephone operating companies (GTE)
9. Information Technology Association of America (ITAA)
10. International Communications Association (ICA)
11. MCI Telecommunications Corporation (MCI)
12. National Telephone Cooperative Association (NTCA)
13. NYNEX Telephone Companies (Nynex)
14. Pacific Bell and Nevada Bell (PacBell)
15. Public Utility Commission of Texas
16. Puerto Rico Telephone Company
17. The Southern New England Telephone Company (SNET)
18. Southwestern Bell Telephone Company (SWB)
19. Sprint Corporation (Sprint)
20. Tennessee Public Service Commission
21. U S West, Inc. (U S West)
22. United States Telephone Association (USTA)

Certificate of Service

I, Melanie G. Raycroft, hereby certify that the foregoing Reply Comments of The Southern New England Telephone Company in CC Docket No. 93-251 have been served this day, by United States mail, first class postage prepaid, to the parties of record in this proceeding.



Melanie G. Raycroft

January 10, 1994